

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Skowron-Muco	Team: Team # 2	CCRB Case #: 200901980	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/09/2009 12:05 AM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 8/9/2010	EO SOL 8/9/2010	
Date/Time CV Reported Mon, 02/09/2009 3:51 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/09/2009 3:51 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Murphy	25384	946058	046 PCT
2. POM Harry Delacruz	20377	941272	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Monahan	28027	942225	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Harry Delacruz	Force: PO Harry Delacruz used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Harry Delacruz	Discourtesy: PO Harry Delacruz spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
C.POM Joseph Murphy	Discourtesy: PO Joseph Murphy spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
D.POM Joseph Murphy	Abuse: PO Joseph Murphy threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
E.POM Joseph Murphy	Force: PO Joseph Murphy struck § 87(2)(b) with an asp.	§ 87(2)(b)
F.POM Harry Delacruz	Abuse: PO Harry Delacruz threatened to arrest § 87(2)(b)	§ 87(2)(b)

Synopsis

On February 9, 2009, § 87(2)(b) contacted the CCRB to file this complaint. He reported that earlier this date, at 12:05am, he was returning to his apartment from the store with his friend § 87(2)(b). § 87(2)(b) was in the hallway outside his apartment smoking a cigarette when two police officers, PO Harry Delacruz and PO Joseph Murphy, approached him and asked what he was doing and if he lived in the building. § 87(2)(b) refused to put out the cigarette and was subsequently pushed against the wall. § 87(2)(b) resisted arrest and PO Delacruz pushed him against the wall (**Allegation A**). § 87(2)(b)'s girlfriend, § 87(2)(b) exited her apartment at this time and was allegedly told "get your ass inside" or "get back inside the fucking house." (**Allegation B**). Meanwhile, PO § 87(2)(b) ordered § 87(2)(b) to "get the fuck back" (**Allegation C**) and extended his asp towards him to prevent him from interfering with § 87(2)(b)'s arrest (**Allegation D**). Once § 87(2)(b) was controlled, PO Murphy assisted with § 87(2)(b)'s arrest and struck § 87(2)(b) with an asp (**Allegation E**). § 87(2)(b) was subsequently arrested for § 87(2)(b) and transported to the 46th Precinct. Outside the building, § 87(2)(b) alleged that PO Delacruz told him, "Get the fuck out of here or I will arrest you too." (**Allegation F**). § 87(2)(b) was not arrested or summonsed.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 18, 2009 (encl. 7a-e). § 87(2)(b) is a § 87(2)(b) year old Hispanic male. He is 5'7 inches tall, weighs 170 pounds and has black hair and brown eyes.

On February 9, 2009 at approximately 12:05am, § 87(2)(b) and his friend, § 87(2)(b) went to a store, which is located one block away from his residence at § 87(2)(b) and purchased a 2-liter bottle of Pepsi. Upon exiting the store, § 87(2)(b) lit up a cigarette and the cigarette was still lit when § 87(2)(b) and § 87(2)(b) returned to § 87(2)(b)'s residence.

§ 87(2)(b) and § 87(2)(b) entered the building where § 87(2)(b) stood at a window, near his apartment on the first floor, and continued to smoke the cigarette. At that point, two officers approached § 87(2)(b). One of the officers was a young, black male, 5'8" tall and 155 pounds. This officer was identified via investigation as PO Harry Delacruz. The other officer was a white male, 5'7" tall, 165 pounds. This officer was identified as PO Joseph Murphy. Both officers inquired as to whether § 87(2)(b) was a resident of the building, which he confirmed and then pointed out his apartment door. PO Delacruz told § 87(2)(b) to put his cigarette out and said that smoking is prohibited in the building. § 87(2)(b) asked PO Delacruz again why he could not smoke there and explained that he always smokes in the building. PO Delacruz pushed § 87(2)(b) smacked the cigarette out of § 87(2)(b)'s mouth, which caused § 87(2)(b)'s eyeglasses to fall off, and attempted to handcuff § 87(2)(b). § 87(2)(b) requested to see PO Delacruz's captain. PO Delacruz told § 87(2)(b) to "shut up" and continued to attempt to handcuff him.

§ 87(2)(b) told § 87(2)(b) to knock on his apartment door, § 87(2)(b) complied and § 87(2)(b)'s girlfriend, § 87(2)(b) came out of the apartment. PO Delacruz told § 87(2)(b) to get her, "ass inside". Again, § 87(2)(b) requested to speak with the captain and PO Delacruz placed handcuffs on one of § 87(2)(b)'s arms. Approximately three to four other officers arrived on the scene and PO Murphy took out his nightstick. § 87(2)(b) referred to the nightstick as a "stick.") The officers walked § 87(2)(b) closer to the elevator and PO Murphy hit § 87(2)(b) with the nightstick on his ribs, back and knee in an effort to

get § 87(2)(b) to the floor to handcuff him. § 87(2)(b) was non-compliant and repeatedly asked why he was being handcuffed as he continued to curse at the officers. At that point, § 87(2)(b) and § 87(2)(b)'s neighbor, known only as § 87(2)(b) were the only civilians in the hallway.

§ 87(2)(b) could not provide a physical description of the four other officers who responded to the incident because earlier in the incident § 87(2)(b)'s eyeglasses had fallen off preventing him from seeing well. § 87(2)(b) questioned why the officer was hitting him while cursing at them, "fuck you." The officers placed § 87(2)(b) on the floor and then finally placed him in handcuffs.

Results of Investigation

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 18, 2009 (encl. 8a-d). § 87(2)(b) is a § 87(2)(b) old black male. § 87(2)(b) is 5'8 inches tall, 150 pounds, with brown hair and brown eyes. His statement was consistent with § 87(2)(b) with the following exceptions noted.

When § 87(2)(b) and § 87(2)(b) returned back to the building, § 87(2)(b) and § 87(2)(b) stood at a window on the first floor of the building, near § 87(2)(b)'s apartment door, as § 87(2)(b) continued to smoke the cigarette. At that point, two officers, PO Delacruz and PO Murphy, entered the building and asked § 87(2)(b) and § 87(2)(b) whether they lived in the building. § 87(2)(b) responded that he lived in the apartment by which he was standing. PO Delacruz told § 87(2)(b) that he should not smoke inside the building. After § 87(2)(b) questioned why he could not smoke in the building, PO Delacruz responded that it was against the law. § 87(2)(b) responded that he and § 87(2)(b) were almost finished and they would be out of the officers' way shortly. PO Murphy then requested § 87(2)(b)'s identification. He complied.

PO Delacruz instructed § 87(2)(b) to get up against the window and then pushed § 87(2)(b)'s chest, which caused § 87(2)(b)'s back to hit the window. PO Delacruz ordered § 87(2)(b) to put his cigarette out but § 87(2)(b) was not compliant. PO Delacruz grabbed the cigarette out of § 87(2)(b)'s mouth and flicked it in the air. § 87(2)(b) inquired why PO Delacruz would put his hands on him. PO Murphy told § 87(2)(b) that it was his "lucky fucking day" and told him to leave the building. § 87(2)(b) refused to leave the building and did not move. PO Murphy told § 87(2)(b) to, "Back the fuck up" and § 87(2)(b) complied. However, PO Murphy still took out his asp, retracted it and swung it twice at § 87(2)(b) and tried to hit § 87(2)(b) in his knee and stated, "Get the fuck out of here". Then, PO Murphy ran back to PO Delacruz near the window, where § 87(2)(b) held on to the guardrails of the window.

§ 87(2)(b) requested to see PO Delacruz's captain. PO Delacruz pulled out his handcuffs and said, "I'll show you my captain", implying that § 87(2)(b) would be arrested. § 87(2)(b) cursed at PO Delacruz and PO Delacruz pushed § 87(2)(b) against the window. PO Delacruz tried to turn § 87(2)(b) around so that he could handcuff him. PO Murphy hit § 87(2)(b) in the ribcage twice. § 87(2)(b) told PO Murphy to hit him harder, at which point, PO Murphy hit § 87(2)(b) in the knee. Because § 87(2)(b) did not let go of the guardrails, PO Murphy struck § 87(2)(b) several more times with the asp and then grabbed § 87(2)(b)'s neck. At that point, § 87(2)(b) let go of the guardrails and pushed PO Murphy's arms away.

In the meantime, PO Delacruz called for back up and three police vans along with four patrol cars responded to the incident and the officers entered the building and kicked § 87(2)(b) in an effort to turn § 87(2)(b) over so that they could handcuff him. Ultimately, the officers got § 87(2)(b) on his chest and handcuffed him. § 87(2)(b) did exit the apartment with her daughter and § 87(2)(b)'s stepfather, who remains unidentified. When § 87(2)(b) asked what the problem was, the officers told § 87(2)(b) to, "Get back inside the fucking house" and refused to give any information regarding why § 87(2)(b) was arrested. § 87(2)(b) went outside and asked PO Delacruz why § 87(2)(b) was arrested, and was told "Get the fuck out of here before I arrest you too". § 87(2)(b) walked back inside the building.

§ 87(2)(b)

Since § 87(2)(b) stated that his neighbor, who he identified only as § 87(2)(b) witnessed the incident, on March 2, 2009, a first please call letter was generated and a final letter was sent on March 9, 2009. § 87(2)(b) was subsequently identified as § 87(2)(b). She provided a telephone statement on March 10, 2009 (encl. 14f). § 87(2)(g)

On February 9, 2009, § 87(2)(b) heard commotion in the hallway of her apartment building and heard her neighbor, § 87(2)(b) yell that he wanted to speak with a captain. When § 87(2)(b) opened her door she observed officers throw § 87(2)(b) up against the wall in an attempt to put handcuffs on § 87(2)(b). § 87(2)(b) observed the officers tussle with § 87(2)(b) who appeared to resist arrest and stated that he did not do anything wrong by smoking in the hallway. § 87(2)(b) speculated that § 87(2)(b) requested to speak with a captain because he wanted to explain that he usually smokes cigarettes by a hallway window in the building, where some building tenants usually smoke. The incident lasted five to ten minutes. § 87(2)(b) was not able to provide a detailed description of any of the officers. The officers refused to provide any information to § 87(2)(b) who was in the hallway. § 87(2)(b) did not mention that officers used profanity against § 87(2)(b).

Attempts made to contact witnesses

§ 87(2)(b) was contacted on February 23, 2009. On this date she provided a brief telephone statement and confirmed that she was only ordered to get back inside her apartment. She did not allege any profanity used against her. An interview was scheduled for February 27, 2009. § 87(2)(b) failed to appear for this scheduled appointment.

Identification of officers interviewed

PO Delacruz was identified via the arrest paperwork. PO Delacruz confirmed that PO Murphy was his partner on February 9, 2009.

Officer statements

PO Harry Delacruz

PO Harry Delacruz was interviewed at the CCRB on February 24, 2009 (encl. 11a-c). PO Delacruz is a Hispanic male, 6'3 inches tall, weighs 170 pounds, and has black hair and brown eyes. On February 9, 2009, PO Delacruz was on duty, in uniform and assigned to Impact routine patrol with PO Joseph Murphy in a marked RMP. PO Delacruz was the recorder and PO Murphy was the operator. PO Delacruz memo book noted that at 12:05am he made an arrest inside of § 87(2)(b).

PO Delacruz prepared the **complaint and arrest report** in regard to the incident (encl. 9a-b and 10a-b). The narrative reads that § 87(2)(b) was stopped inside of a public building for smoking inside of the hallway. § 87(2)(b) refused to put the cigarette out and show identification. After cursing at PO Delacruz, he proceeded to throw punches at PO Delacruz and PO Murphy. § 87(2)(b) continued to resist arrest. His charges consisted of § 87(2)(b).

On February 9, 2009 at approximately 12:05am, as PO Delacruz and PO Murphy drove in the vicinity of § 87(2)(b) they observed that there were two males, identified through the investigation as § 87(2)(b) and § 87(2)(b) smoking inside the building. The patrol car was approximately 10-15 feet away from the building, which was on the passenger side of the building, and the patrol car traveled at approximately 15-20 miles an hour. The building has windows which allowed the officers to see inside. PO Delacruz and PO Murphy were not sure whether § 87(2)(b) and § 87(2)(b) were smoking cigarettes or marijuana. After the officers observed § 87(2)(b) and § 87(2)(b) for approximately less than a minute, PO Delacruz and PO Murphy entered the building. They made a right into the building and from approximately 5 feet away, PO Delacruz observed § 87(2)(b) and § 87(2)(b) smoking cigarettes. PO Delacruz approached § 87(2)(b) and PO Murphy approached § 87(2)(b). PO Delacruz asked § 87(2)(b) if he was a resident of the building and § 87(2)(b) responded that he is a resident of the apartment which was in front of him. In sum, PO Delacruz made over five verbal requests for § 87(2)(b) to put out his cigarette but § 87(2)(b) was non-compliant. At that point, PO Delacruz decided to issue a summons to § 87(2)(b) and he requested § 87(2)(b)'s identification but § 87(2)(b) stated, "I am not going to give you my fucking identification" and he continued to curse at PO Delacruz. PO Delacruz made another verbal request for § 87(2)(b)'s identification but § 87(2)(b) was non-compliant and continued to curse at PO Delacruz. Simultaneously, PO Murphy interacted with § 87(2)(b) who was compliant when instructed to put out his cigarette. § 87(2)(b) also produced identification upon request.

Given that § 87(2)(b) was reluctant to produce identification and acted aggressively, PO Delacruz informed § 87(2)(b) that he would be placed under arrest. PO Delacruz grabbed one of § 87(2)(b)'s arms but § 87(2)(b) resisted the grip and continued to curse at PO Delacruz. PO Delacruz speculated that the

cigarette fell down when PO Delacruz attempted to handcuff § 87(2)(b). PO Delacruz did not smack the cigarette out of § 87(2)(b)'s mouth. § 87(2)(b) clenched his right fist as if he were preparing to strike PO Delacruz. A female, § 87(2)(b) opened the apartment door and appeared that she was about to exit the apartment. PO Delacruz told her, "Ma'am, go back inside." PO Delacruz did not tell § 87(2)(b) "Get back inside the fucking house" or "Get your ass inside." PO Delacruz was the only officer to instruct § 87(2)(b) to get back into her apartment and he stated that she held a child so it would have been inappropriate for him to have cursed at her. PO Delacruz could not recall whether § 87(2)(b) stated anything. § 87(2)(b) told PO Delacruz, "Scream at my wife one more time and I am going to punch you in the face." As a result of the threat from § 87(2)(b) PO Delacruz feared for his safety. PO Delacruz grabbed § 87(2)(b)'s shoulders and a tussle ensued. PO Delacruz made attempts to place § 87(2)(b)'s arms behind his back in an effort to handcuff him. PO Delacruz stated, "Put your hands behind your back. Put your hands behind your back. Stop resisting," but § 87(2)(b) was non-compliant. PO Delacruz did not use any weapons, he only used his arms. PO Delacruz and § 87(2)(b) were still near the window, which was approximately 10-15 feet away from the entrance door. PO Delacruz and § 87(2)(b) were against the window but PO Delacruz did not push § 87(2)(b) against the window or towards the window. § 87(2)(b) resisted and screamed, "Where is your fucking captain?"

At that time, PO Murphy made efforts to prevent § 87(2)(b) from becoming involved in the tussle between § 87(2)(b) and PO Delacruz. PO Murphy and § 87(2)(b) were closer to the entrance door of the building. PO Murphy told § 87(2)(b) to go back and they were approximately one foot from one another. Neither PO Delacruz nor PO Murphy told § 87(2)(b) "Back the fuck up." As a result of having to deal with § 87(2)(b) PO Murphy was not able to assist PO Delacruz in handcuffing § 87(2)(b). PO Murphy requested back up and shortly after, two additional officers arrived. PO Delacruz did not tell § 87(2)(b) that he would be arrested or have an interaction with § 87(2)(b). § 87(2)(b) was not told by any officer, "Get the fuck out of here before I arrest you." PO Delacruz did not tell § 87(2)(b) that it was his "lucky fucking day" and neither did any other officer. From his peripheral view, PO Delacruz just observed that PO Murphy prevented § 87(2)(b) from becoming involved with § 87(2)(b) and PO Delacruz. PO Delacruz did not observe § 87(2)(b) with his asp drawn or retracted. PO Murphy and PO Delacruz are both equipped with an asp but neither one of their asps was retracted or used.

Upon the arrival of the back up officers, § 87(2)(b) was not yet handcuffed. Two uniformed officers assigned PO Delacruz in handcuffing § 87(2)(b). PO Delacruz did not know whether these officers had their asps out but stated that he did not observe or hear the sound of an asp. PO Delacruz did use his legs to sweep § 87(2)(b) to the fall, while holding his upper body. PO Delacruz did not kick § 87(2)(b). He was ultimately handcuffed. At no point, was § 87(2)(b) struck in the back, the ribs or the knee or grabbed by the neck. § 87(2)(b) did not appear injured but at the station house, he did complain of pain to his head. PO Delacruz did not have physical contact with § 87(2)(b)'s head and he did not witness any other officer have a physical interaction with § 87(2)(b)'s head.

§ 87(2)(b) did not come outside the building or ask PO Delacruz or PO Murphy where § 87(2)(b) was being taken. PO Delacruz and the other officers did not make use of any discourtesies at all during the incident. Neither PO Delacruz nor any other officer kicked § 87(2)(b).

PO Joseph Murphy

PO Joseph Murphy was interviewed at the CCRB on March 13, 2009 (encl. 12a-c). PO Murphy is a white male, 5'10 inches tall, weighs 165 pounds and has brown hair and brown eyes. On February 9, 2009 at approximately 12:05am, PO Murphy was on duty, in uniform and assigned to marked van# 5476 with PO Harry Delacruz. PO Murphy did not have an entry in his memo book regarding the incident. His statement was consistent with PO Delacruz with the following exceptions noted below.

Upon entering the building, PO Murphy and PO Delacruz noticed that there was a cigarette on the floor as they approached § 87(2)(b) and § 87(2)(b). § 87(2)(b) was not smoking but § 87(2)(b) was still smoking a cigarette and he refused to put out his cigarette as he spoke with PO Delacruz. PO Delacruz did not push § 87(2)(b) and § 87(2)(b) threw the cigarette at PO Delacruz. PO Murphy was approximately five feet away from § 87(2)(b) and PO Delacruz. PO Murphy did not witness § 87(2)(b) smack a cigarette out of § 87(2)(b)'s mouth. PO Murphy and PO Delacruz inquired whether § 87(2)(b) and § 87(2)(b) were residents of the building and requested identification from § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that he was visiting. PO Murphy requested § 87(2)(b)'s identification and § 87(2)(b) complied. However, when PO Delacruz requested § 87(2)(b)'s identification, § 87(2)(b) refused to produce identification and

stated, "Let me see your captain." PO Delacruz did not pull out his handcuffs and state, "I'll show you my captain." § 87(2)(b) became irate and cursed at PO Delacruz. PO Delacruz instructed § 87(2)(b) to turn around because he would be placed under arrest. When § 87(2)(b) attempted to place § 87(2)(b) under arrest, § 87(2)(b) pushed PO Delacruz and a struggle ensued. PO Delacruz yelled "Stop resisting" and § 87(2)(b) was very loud and yelling.

At that point, PO Murphy returned § 87(2)(b)'s identification and instructed § 87(2)(b) to leave the building since he was not a resident of the building but § 87(2)(b) refused. PO Murphy observed that § 87(2)(b) began to physically fight with PO Delacruz. Given that § 87(2)(b) did not comply with PO Murphy's requests for him to leave the building, PO Murphy was not able to assist PO Delacruz because he had to deal with § 87(2)(b) because § 87(2)(b)'s non-compliance posed a threat to the officers. PO Delacruz requested that § 87(2)(b) leave the building approximately five times. Since § 87(2)(b) did not leave, PO Murphy took a step toward § 87(2)(b). § 87(2)(b) got into a fighting stance and squared off at PO Murphy. PO Murphy ordered § 87(2)(b) to "back the fuck up" but did not use any other obscenities. At that point, PO Murphy took out his expandable baton and instructed § 87(2)(b) to leave the building or else he would be arrested. PO Murphy did not swing the asp, raise it above his head or attempt to strike § 87(2)(b)'s knee. § 87(2)(b) backed off a little bit but not enough for PO Murphy to have aided PO Delacruz. PO Murphy did not tell § 87(2)(b) that it was his "lucky fucking day."

An apartment door opened and approximately 2-3 individuals exited the apartment. The individuals were one woman and two men. PO Murphy did not recall whether PO Delacruz told a female resident to get her "ass back inside." PO Murphy requested back up and 5-10 minutes later, two uniformed officers arrived from the 46th Precinct. PO Delacruz was still struggling with § 87(2)(b) and PO Murphy was still dealing with § 87(2)(b). The responding officers assisted PO Murphy and PO Delacruz to handcuff § 87(2)(b). At that point, § 87(2)(b) fled the scene. PO Murphy attempted to assist PO Delacruz and the two responding officers and struck § 87(2)(b)'s shin with his asp approximately twice because § 87(2)(b) was resisting the attempts of the three officers to handcuff him. PO Murphy did not grab § 87(2)(b)'s neck. PO Murphy was the only officer to use his asp. PO Murphy never struck § 87(2)(b) with his asp against § 87(2)(b)'s ribs, back or knee. All four officers attempted to get § 87(2)(b) to the ground but § 87(2)(b) was kicking and punching. PO Delacruz was able to handcuff one of § 87(2)(b)'s hands and the two responding officers and PO Murphy were able to get § 87(2)(b) to the ground by pushing him to the ground, at which point, his other hand was placed behind his back and handcuffed. None of the officers hit or kicked § 87(2)(b).

There were approximately 10 officers outside the building who remained outside the building because the building door was locked and they could not get inside. PO Murphy did not hear any officers tell a resident of the building, "Get back inside the fucking house." PO Murphy did not hear PO Delacruz or any other officers use profanity.

Officers not interviewed

Additional officers did respond to the scene in regard to PO Murphy's call for assistance. However, given that the officers responded after the alleged misconduct, this investigation determined that their testimony would not alter the recommended dispositions of the allegations.

NYPD documents

§ 87(2)(b) has no facial injuries visible on his arrest photo (encl. 7e).

Civilian Criminal History

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Notice of Claim

A notice of claim was received noting that § 87(2)(b) is suing the City for \$13, 1000, 000 dollars for past and future pain and suffering and for past and future medical treatment (encl. 13a).

Civilian's CCRB history

This is the first complaint filed by § 87(2)(b) (encl. 5).

Member of Service(s) CCRB History

PO Delacruz has been a member of service for three years and has no substantiated CCRB allegations against him (encl. 3a-b). PO Murphy has been a member of service for one year and has no substantiated CCRB allegations against him (encl. 4).

Conclusions and Recommendations

Subject officer identification:

Officer Delacruz acknowledged that he used physical force to arrest § 87(2)(b). Therefore allegation A is pleaded against him. PO Murphy acknowledged using profanity against § 87(2)(b) extending his asp at § 87(2)(b) and striking § 87(2)(b) with an asp. § 87(2)(g) § 87(2)(b) and § 87(2)(b) alleged that PO Delacruz used profanity against § 87(2)(b) and § 87(2)(b) alleged that PO Delacruz threatened him with arrest. § 87(2)(g)

Undisputed facts:

It is undisputed that § 87(2)(b) was smoking in the hallway with § 87(2)(b). PO Delacruz and PO Murphy approached § 87(2)(b) and he refused to leave until he finished smoking. A struggle ensued and additional officers responded to assist with his arrest. PO Murphy struck § 87(2)(b) with an asp to gain his compliance in being handcuffed. PO Murphy also admitted to using profanity against § 87(2)(b) and extending his asp towards § 87(2)(b).

Disputed facts:

§ 87(2)(g)

Allegations not pleaded

§ 87(2)(g)

Assessment of the Evidence

§ 87(2)(b) stated that PO Delacruz pushed him against the wall and smacked the cigarette from his mouth. While PO Delacruz denied smacking the cigarette from him, he admitted to pushing him against the wall and tussling with him. All parties stated that § 87(2)(b) was non-compliant. He did not want to stop smoking and he did not want to submit himself to be handcuffed. § 87(2)(b) even added that § 87(2)(b) was holding onto the guardrails to prevent himself from being handcuffed. As per Patrol Guide procedure 203-11 (encl. I-II), officers can use the minimal force necessary to gain compliance in an arrest situation. § 87(2)(g)

It is undisputed that PO Murphy struck § 87(2)(b) with an asp. However, while § 87(2)(b) alleged that he was struck several times in his back, rib and side, PO Murphy admitted to striking § 87(2)(b) with an asp, twice, given that he was not complying and resisting arrest. As stated, it is undisputed that § 87(2)(b) was resisting arrest. § 87(2)(b) also stated that despite knowing that officers were attempting to arrest him, § 87(2)(b) was holding onto the guardrails. § 87(2)(b) also stated that it was because § 87(2)(b) refused to release his grip from the guardrails that he was struck by PO Murphy with an

asp. § 87(2)(b) did not suffer from any injuries from the strikes with the asp and never sought medical attention. § 87(2)(g)

§ 87(2)(b) alleged that PO Delacruz ordered § 87(2)(b) to “get her ass inside.” § 87(2)(b) alleged that the command was “Get back inside the fucking house.” Neither officer testified that profanity was used against § 87(2)(b). § 87(2)(b) did not participate with the investigation but stated in her telephone statement that no profanity was used against her. § 87(2)(g)

According to Police Department v. Dukes and Conway Oath Index No. 1137/00(April 26, 2000) (encl. 1a-i), this language was not misconduct because it was used in the context of gaining compliance. § 87(2)(g)

§ 87(2)(b) alleged that PO Murphy made several statements using the expletive “fuck” consisting of “this is your lucky fucking day,” “back the fuck up” and “get the fuck out of here.” PO Murphy solely admitted to instructing § 87(2)(b) back into his apartment by saying, “Back the fuck up.” § 87(2)(g)

Similarly, § 87(2)(b) alleged that PO Murphy swung his asp at him and told him to leave the building. PO Murphy admitted to having his asp out, however, denied that he ever attempted to strike § 87(2)(b) or swing his asp in his direction. § 87(2)(g)

§ 87(2)(g)

According to New York Penal Law 195.05 (encl. 2) a person is guilty of obstructing governmental administration when he intentionally prevents or attempts to prevent a public servant from performing an official function. § 87(2)(g)

Allegation A: PO Harry Delacruz used physical force against § 87(2)(b)

Allegation E: PO Joseph Murphy struck § 87(2)(b) with an asp

§ 87(2)(b) stated that PO Delacruz threw him to the floor and PO Murphy struck him with an asp. § 87(2)(g)

Allegation B: PO Harry Delacruz spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were inconsistent with the profanity alleged against § 87(2)(b) but both stated that some profanity was used to order her back inside her apartment. § 87(2)(g)

Allegation C: PO Joseph Murphy spoke obscenely and/or rudely to § 87(2)(b)

Allegation D: PO Joseph Murphy threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

Allegation F: PO Harry Delacruz threatened to arrest § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: